

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 4/14/20

United States of America,

—v—

Jafar Borden,

Defendant.

15-cr-95 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

The resentencing of Defendant in light of *United States v. Davis*, 139 S. Ct. 2319 (2019), is currently scheduled for April 22, 2020 at 11:00 a.m.

Based on the most recently available information from the United States Marshal Service and the Bureau of Prisons, it is unlikely that Defendant can be physically produced for an in-person sentencing. However, the Second Circuit has recognized, in cases such as *United States v. Salim*, 690 F.3d 115 (2d Cir. 2012), that a defendant can knowingly and voluntarily waive his right to be physically present at sentencing. The Court expects that the scheduled sentencing will not proceed without Defendant's waiver of physical appearance and an extensive colloquy of defense counsel regarding the circumstances of that waiver.

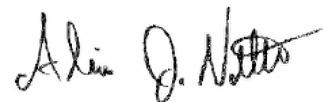
If Defendant and defense counsel have contemplated Defendant's waiver of his physical appearance at any sentencing proceeding, have had a robust waiver discussion, and wish to proceed to sentencing by video or teleconference, defense counsel should advise the Court no later than **April 16, 2020**. If Defendant consents to proceeding by video or teleconference, he should sign and submit the attached waiver of personal appearance form. If not, the parties shall propose alternative dates for sentencing by that date.

The Court notes that video and teleconferencing is currently available on only a limited basis. In particular, MDC can only accommodate video or teleconference proceedings on Tuesdays and Thursdays. Accordingly, if Defendant wishes to waive his physical appearance

and proceed to sentencing by video or teleconference, his sentencing will take place on April 21, 2020 at 9 a.m. If Defendant will proceed to sentencing and defense counsel would like to speak with him briefly prior to the sentencing, defense counsel shall provide the Court with a phone number at which he can be reached by April 16, 2020.

SO ORDERED.

Dated: April 14, 2020  
New York, New York



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ALISON J. NATHAN  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

Defendant.

-----X

**WAIVER OF RIGHT TO BE PRESENT  
AT CRIMINAL PROCEEDING**

-CR- ( ) ( )

**Check Proceeding that Applies**

Entry of Plea of Guilty

I am aware that I have been charged with violations of federal law. I have consulted with my attorney about those charges. I have decided that I wish to enter a plea of guilty to certain charges. I understand I have a right to appear before a judge in a courtroom in the Southern District of New York to enter my plea of guilty and to have my attorney beside me as I do. I am also aware that the public health emergency created by the COVID-19 pandemic has interfered with travel and restricted access to the federal courthouse. I have discussed these issues with my attorney. By signing this document, I wish to advise the court that I willingly give up my right to appear in person before the judge to enter a plea of guilty. By signing this document, I also wish to advise the court that I willingly give up any right I might have to have my attorney next to me as I enter my plea so long as the following conditions are met. I want my attorney to be able to participate in the proceeding and to be able to speak on my behalf during the proceeding. I also want the ability to speak privately with my attorney at any time during the proceeding if I wish to do so.

Date: \_\_\_\_\_

Print Name \_\_\_\_\_

Signature of Defendant \_\_\_\_\_

Sentence

I understand that I have a right to appear before a judge in a courtroom in the Southern District of New York at the time of my sentence and to speak directly in that courtroom to the judge who will sentence me. I am also aware that the public health emergency created by the COVID-19 pandemic has interfered with travel and restricted access to the federal courthouse. I do not wish to wait until the end of this emergency to be sentenced. I have discussed these issues with my attorney and willingly give up my right to be present, at the time my sentence is imposed, in the courtroom with my attorney and the judge who will impose that sentence. By signing this document, I wish to advise the court that I willingly give up my right to appear in a courtroom in the Southern District of New York for my sentencing proceeding as well as my right to have my attorney next to me at the time of sentencing on the following conditions. I want my attorney to

be able to participate in the proceeding and to be able to speak on my behalf at the proceeding. I also want the ability to speak privately with my attorney at any time during the proceeding if I wish to do so.

Date: \_\_\_\_\_  
Print Name \_\_\_\_\_ Signature of Defendant \_\_\_\_\_

I hereby affirm that I am aware of my obligation to discuss with my client the charges against my client, my client's rights to attend and participate in the criminal proceedings encompassed by this waiver, and this waiver and consent form. I affirm that my client knowingly and voluntarily consents to the proceedings being held with my client and me both participating remotely.

Date: \_\_\_\_\_  
Print Name \_\_\_\_\_ Signature of Defense Counsel \_\_\_\_\_

**Addendum for a defendant who requires services of an interpreter:**

I used the services of an interpreter to discuss these issues with the defendant. The interpreter also translated this document, in its entirety, to the defendant before the defendant signed it. The interpreter's name is: \_\_\_\_\_.

Date: \_\_\_\_\_  
Signature of Defense Counsel \_\_\_\_\_

**Accepted:** \_\_\_\_\_  
Signature of Judge \_\_\_\_\_  
Date: \_\_\_\_\_